

AMENDED IN SENATE MARCH 25, 2008

**SENATE BILL**

**No. 1732**

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**Introduced by Senator Romero**

*(Principal coauthor: Assembly Member Lieber)*

**(Coauthor: Senator McClintock)**

~~(Coauthors: Assembly Members Lieber and Portantino)~~ *Coauthor:*  
*Assembly Member Portantino)*

February 22, 2008

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An act to amend Section 54952.2 of, and to add Section 6252.7 to, the Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1732, as amended, Romero. Local agencies.

~~The~~

*(1) The* Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference. An appellate court in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 held that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence.

This bill would instead prohibit a majority of members of a legislative body of a local agency from using, *outside a meeting authorized by the act*, a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative

body. It also would state the Legislature's declaration that it disapproves the holding of the court in the case named above to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding. *It would also state the Legislature's intention that the changes made by this bill do not prevent a local agency staff official, employee, or individual from engaging in separate conversations or communications, outside of a meeting authorized by the Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, provided that the local agency staff official, employee, or individual does not communicate to members of the legislative body the comments or position of any other member or members of the body.*

~~The~~

(2) *The* California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding any other provision of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

This bill would provide that, notwithstanding any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available; ~~and shall not charge any of those members a fee to inspect or obtain a copy of that writing.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature hereby declares that it disapproves the court's holding in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition.

(b) It is the intent of the Legislature that the changes made by Section 3 of this act supersede the court's holding described in subdivision (a).

(c) *It is the intent of the Legislature that the changes made by Section 3 of this act do not prevent a local agency staff official, employee, or individual from engaging in separate conversations or communications, outside of a meeting authorized by the Ralph M. Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, provided that the local agency staff official, employee, or individual does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.*

SEC. 2. Section 6252.7 is added to the Government Code, to read:

6252.7. Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available, and shall not charge any of those members a fee to inspect or obtain a copy of that writing, available.

SEC. 3. Section 54952.2 of the Government Code is amended to read:

1     54952.2. (a) As used in this chapter, “meeting” means any  
2 congregation of a majority of the members of a legislative body  
3 at the same time and location, including teleconference location  
4 as permitted by Section 54953, to hear, discuss, deliberate, or take  
5 action on any item that is within the subject matter jurisdiction of  
6 the legislative body.

7     (b) A majority of the members of a legislative body shall not,  
8 *outside a meeting authorized by this act*, use a series of  
9 communications of any kind, directly or through intermediaries,  
10 to discuss, deliberate, or take action on any item of business that  
11 is within the subject matter jurisdiction of the legislative body.

12     (c) Nothing in this section shall impose the requirements of this  
13 chapter upon any of the following:

14     (1) Individual contacts or conversations between a member of  
15 a legislative body and any other person that do not violate  
16 subdivision (b).

17     (2) The attendance of a majority of the members of a legislative  
18 body at a conference or similar gathering open to the public that  
19 involves a discussion of issues of general interest to the public or  
20 to public agencies of the type represented by the legislative body,  
21 provided that a majority of the members do not discuss among  
22 themselves, other than as part of the scheduled program, business  
23 of a specified nature that is within the subject matter jurisdiction  
24 of the local agency. Nothing in this paragraph is intended to allow  
25 members of the public free admission to a conference or similar  
26 gathering at which the organizers have required other participants  
27 or registrants to pay fees or charges as a condition of attendance.

28     (3) The attendance of a majority of the members of a legislative  
29 body at an open and publicized meeting organized to address a  
30 topic of local community concern by a person or organization other  
31 than the local agency, provided that a majority of the members do  
32 not discuss among themselves, other than as part of the scheduled  
33 program, business of a specific nature that is within the subject  
34 matter jurisdiction of the legislative body of the local agency.

35     (4) The attendance of a majority of the members of a legislative  
36 body at an open and noticed meeting of another body of the local  
37 agency, or at an open and noticed meeting of a legislative body of  
38 another local agency, provided that a majority of the members do  
39 not discuss among themselves, other than as part of the scheduled

1 meeting, business of a specific nature that is within the subject  
2 matter jurisdiction of the legislative body of the local agency.

3 (5) The attendance of a majority of the members of a legislative  
4 body at a purely social or ceremonial occasion, provided that a  
5 majority of the members do not discuss among themselves business  
6 of a specific nature that is within the subject matter jurisdiction of  
7 the legislative body of the local agency.

8 (6) The attendance of a majority of the members of a legislative  
9 body at an open and noticed meeting of a standing committee of  
10 that body, provided that the members of the legislative body who  
11 are not members of the standing committee attend only as  
12 observers.